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IN THE

Supreme Court of the United States.

October Term, 1922.

No. 184.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
Appellant,

v.

THE UNITED STATES, *Appellee.*

BRIEF FOR APPELLANT.

Appellant, the St. Louis Southwestern Railway Company, contracted to carry the mails for periods of four years, unless sooner terminated by orders of the Postmaster General, commencing on July 1, 1910, as to four mail routes and on July 1, 1911, as to two other routes. Midway of these contract terms, Congress established the parcel post, the operation of which commenced on January 1, 1913. No compensation was ever voted by Congress, and none received by the railroad companies for the initial six months of this service, terminating on June 30, 1913. For later periods, running to the end of the quadrennial terms, by the Postoffice Appropriation Acts of March 4, 1913, and July 28, 1916, the Postmaster General was authorized to pay specific compensation,

within maxima named, for the parcel post service to the end of the quadrennial terms. To the present appellant, as to the railroad companies generally, there was paid much less than the full increases authorized.

The suit seeks to recover reasonable compensation for the six months period indicated and additional compensation, to make up reasonable and compensatory totals, not limited by the rates which Congress authorized, for the remaining one year and two years respectively of the contract periods.

The facts will be clearer if the statement commences with the Act of Congress of March 3, 1879 (20 Stat., Ch. 359, p. 355) which defined and classified the mails. In the first, second and third class were included letters, postal cards, other written matter, newspapers and other periodicals, books, circulars and printed matter generally. Fourth-class mails were defined, by section 20 of said act, as below:

> "That mailable matter of the fourth class shall embrace all matter not embraced in the first, second, or third class, which is not in its form or nature liable to destroy, deface or otherwise damage the contents of the mail bag, or harm the person of any one engaged in the postal service, and is not above the weight provided by law, which is hereby declared to be not exceeding four pounds for each package thereof, except in case of single books and documents published or circulated by order of Congress, or official matter emanating from any of the departments of the Government or from the Smithsonian Institution, or which is not obscene matter declared non-mailable under the provisions of section 3893 of the Revised Statutes as amended by the act of July 12, 1876, or matter pertaining to lotteries, gift concerts or fraudulent schemes or devices."

By this act authority was given to the Postmaster General to determine what articles were of a nature to cause damage to the mails or to persons engaged in the postal service; and the Postmaster General by orders fixed upon the following articles and excluded them from the mails: Intoxicating liquors, poisons, explosive, or inflammable matter, animals, birds, insects, and reptiles alive or (unless prepared packed in certain prescribed ways) dead; articles exhaling a bad odor; pistols, medicines and toilet articles (unless packed in certain prescribed ways); poisons, fruits or vegetable matter liable to decomposition, comb honey and liquors liable to ignition by shock or jar. These orders of the Postmaster General were carried into the Postal Laws and Regulations promulgated in 1902, becoming sections 494 to 500, inclusive, thereof.

Both before and after 1879 the laws constantly fixed the rates of postage for each class of mails and graduated the same according to the weights of the packages and without regard to the distance to be traveled.

This act was always understood by the public as providing for transportation for a package, weighing four pounds or less, of drygoods or hardware or other dry merchandise, or articles of domestic make, but not of the larger merchandise for which the great stores in the cities were seeking and finding a larger and larger market in rural districts; and clearly it left the farmer dependent on the freight or express service of the railroads for the marketing of his products. By 1912 a strong sentiment, cultivated by the department stores, farmers and householders generally, over the systematic opposition of the express companies, had grown up in favor, especially, of the dispatch by the postal facilities of farm products and merchandise without regard to kinds or qualities, and in such ways as to compete effectively with the express companies.

During the second session of the Forty-eighth Congress the House Committee on Postoffices and Post roads gave careful study to this desired postal-freight service and, as well, to another plan, also having many friends, of merely raising the weight limit on fourth-class mail matter and, by establishing a per-pound instead of per-ounce rate, of making the service generally cheaper.

The committee in its report and the chairman, Representative John A. Moon, in his explanation thereof, confessed the difficulties with which the committee had labored and its unwillingness to provide for a postal-freight service on such information as was then accessible. The report, in part, said (Congressional Record, Vol. 48, p. 4493):

> "The most of people living in the country and engaged in agriculture and other pursuits, so far as we can secure information, and the larger mercantile establishments in the great cities favor an unlimited parcel post law. The country merchant and nearly all merchants of the smaller cities and towns oppose the law. This seems to be the alignment. Self-interest, the mainspring of most of our actions, seems to be commanding in both factions. We do not think that the advantage claimed for the establishment of this post will be so great as its ultra friends claim, nor that the disadvantages would be nearly so great as its enemies fear.
>
> "The necessity for conservative legislation in view of such a contention and division among the people is apparent. We should seek to secure all the advantages possible and avoid all the disadvantages that may arise from any proposed legislation in the interest of the masses of the whole people. Laws should bear as nearly as possible, equally and justly on all classes under all conditions. We have heard much testimony, very interesting in its details, but for the most part from those who express an opinion

from a general view of general conditions. We need specific facts and not merely opinions on which to pass intelligent and satisfactory legislation. It would seem essential that we know how this innovation in our postal system will affect our revenue; what additional burdens we must assume in increased numbers of employees and the increased railway and carriage pay; whether a flat rate can be established for the whole of the United States or not, and at what figure; whether it would be wise to adopt the zone system of transportation and pay for carriage or not; how far this extra service would interfere with the handling of first, second and third class mail matter; the probable losses and profits under different rates; the effect on the centralization of trade; whether the express companies could under one system or another secure the short hauls and leave the long and expensive hauls to the Government; whether it would first be best to condemn the express companies' contracts with the railroads or not, and use them, or to force the railroad companies to equal rates for the Post Office Department that is granted the express companies, or to pursue either of these courses; to know the tendency of the system to create and sustain monopolies and its effect on the commercial and farming interests of the country."

Considerable debate on the committee's project followed in which various members expressed objections on the points that no new facility was offered to the farmer to ship, and the consumer to receive, farm produce; that on star routes the limit of four pounds for the old fourth-class matter was not raised; that no dimensions were specified for the new matter, of the old descriptions, to weigh as much as eleven pounds per package, etc. (Ib. pp. 4494-4497). The bill passed the House, however, with no change in this provision of the committee relative to fourth-class mails.

The Senate committee on Postoffices and Post Roads practically rewrote this provision of the House bill. Here also the chairman of the committee, in submitting the report, explained the differences of views which had obtained. He stated that the Senate substitute was for the benefit of farmers, merchants and manufacturers at large, providing for the carriage, and fixing details as to large packages—establishing, in effect, an express business against which in many cases the express companies could not successfully compete; that a scientific graduation of rates, referring to distance traveled, had been worked out, etc. Among those who had been heard by the committee, and who favored the committee's scheme, he said, were the leading organizations of farmers, manufacturers, wholesale and retail merchants, commercial travelers and numerous civic bodies (Ib., pp. 10806, 10812, 10831). A few senators thought the same ends might better be served by the Government's taking over the entire express business as done by the private companies, but the bill passed the Senate practically as it came out of committee (Ib., pp. 9448-9465, 10714-10716).

Following conferences both houses consented to the insertion of the words "including farm and factory products" after "all other matter," in the second line of the Senate substitute, and so the law, as passed, contained precisely what is set out in paragraph VII of the petition (Record, p. 5).

Speaking first of the House provision the Senate report (No. 955 of that session) said:

"This is commonly referred to as a parcel post provision, but the service proposed is so limited in extent that it is not deemed satisfactory by the Senate committee. * * * The Senate committee believes that this [House] rate on fourth-class matter is excessively high,

that a flat rate is unscientific and inequitable, and that no good reason exists for further delay in the enactment of a parcel post bill. For eleven months this committee, by subcommittee and otherwise, has been giving thorough consideration to the parcel post problem and has held hearings and collected the most complete information ever made available in this country."

With aid given by a subcommittee of his committee, he being chairman thereof, and of some chief officials of the Postoffice Department, the Chairman of the Senate committee, Senator Bourne, had prepared a bill of his own, and it was this, with some unimportant changes, the committee proposed and both houses accepted as a substitute for the House provision.

In the Senate subcommittee report, adopted by the committee, or in the committee report proper it was said:

"Postal transportation in my opinion differs in some respects from any other. There are two activities in most postal service—one performed by the Government or carrier, each paid directly by the Government, and the other performed by a transportation committee. The first activity I term the overhead or handling activity, representing the collection and delivery of packages. The other I term the transportation activity, paid by the Government, not directly to the Government employee, but to the transportation company carrying the packages. * * * In the local city and rural service all the work is performed by the Government employee, whatever transportation is performed is by the Government vehicle or Government employee. Therefore the handling or overhead cost covers the transportation cost in these two activities. Therefore, as shown in section 4 of my bill, I recommend the adoption of 5 cents for the first pound and 1 cent for every additional pound up to 11 pounds on all rural routes and on all city delivery (pp. 10 and 11).

The next problem was the ascertainment of the necessary transportation charge based on distance traveled. In my initial study of the problem I thought this would be easily solved by taking each postoffice as a center and drawing around it according to the zone distance established. I soon determined the impracticability of the adoption of this plan.

The next thought was the adoption of a unit consisting of a quadrangle formed by meridians of longitude and parallels of latitude. * * * Inequality is avoided in the plan I have proposed * * * by dividing the degree-quadrangles into quadrangles of 30 minutes length north and south and east and west, giving the same rate to every postoffice in each quarter-degree quadrangle with the privilege of sending at the same rate to any postoffice in every contiguous quarter-degree quadrangle (p. 11).

I have adopted in the bill herewith presented for the first zone the rate of 6 cents for the first pound and 2 cents for each pound, 1 cent per pound being for transportation and remainder for overhead or handling charge (p. 12).

I believe the flat-rate system inequitable and impracticable as applied to packages such as we expect to transport under parcel post. It is inequitable because it disregards distance. In the transportation of letters, where the individual pieces are small, distance is of little consequence; but this is not true of packages of merchandise (p. 13).

Government ownership of express companies I deem unwise and unnecessary. It tends toward paternalism and bureaucracy. It should only be adopted as a denier resort, where regulation has been demonstrated to be a failure (p. 13).

The proposed rates, although not as low as proposed in the original bill, are in nearly all cases lower than prevailing express rates and especially low for the small sized packages. * * * Although the rates proposed in the Senate committee's substitute are on some weights and zones somewhat higher than the express rates pro-

posed by the Interstate Commerce Commission [but not established] it should be remembered that the service rendered by the postal system is much more extensive than the service rendered by the express companies. For instance the charge made by an express company for a 200-mile haul covers the transportation of a package only from one town to another, without any rural service and with a limited city delivery. On the other hand the Government, under this proposed parcel-post system, will take a parcel from a farmer's home on a rural route, carry it to town, transport it 200 miles over rail routes, and then, if desired, deliver it to another farmer out on another route. (Report proper, p. 16.)"

If explanation be necessary, this official history of the statute concerned will explain why the parcel-post matter, not merely was a great addition in tonnage to the mails, but put a much greater expense, in proportion to weight, on appellant than did the "mails," strictly speaking, which it was carrying under its contracts (Petition paragraph XII, Record, p. 12). Congress after full consideration, embarked upon that "innovation" to which Chairman Moon and the House committee adverted, which was truly a fast freight service. There would have been no innovation in character of service rendered if the House committee's plan had been adopted and the four pounds limit for dry packages (fourth-class mail) raised to eleven pounds—though apparently the railroads even in that case could have maintained their actions for breach of their contracts and recovered a proportionate increase of pay.

Propositions of Law.

(1) Under a contract for a particular service though undefined in volume, with a stipulation for increases of the same, at the option of the recipient thereof, the other

party is not lawfully bound to perform other services, differing substantially from those.

United States v. Utah Stage Co., 199 U. S. 414, 39 Ct. Cls. 438.
Weigel's case 47 Ct. Cls. 458.
Woolverton's case, 34 Ct. Cls. 247.
Union Transfer Co., case, 36 Ct. Cls. 216.
William S. Knox, Extr.'s case, 30 U. S. 59.
Freund v. United States, — U. S., not officially reported.

(2) Regardless of the abstract meaning of the words used, a contract must be interpreted and enforced in the sense that the parties intended.

Serrales Succession v. Esbi, 200 U. S. 1931.
United States v. Utah Stage Co., sup.
Rock Island Railway Co. v. Rio Grande Co., 143 U. S. 596 (609).
Kerr vs. Schwaner, 179 Fed. 659 (655, 656).

(3) When property of a citizen is taken or his service exacted either by an executive officer of the Government or by Congress, the Fifth Amendment to the Constitution requires that the Government compensate him the full amount of his injury.

Bothwell v. United States, 254 U. S. 231.
U. S. v. Cress, 243 U. S. 316.
United States v. Great Falls Mfg. Co., 112 U. S. 645, 124 U. S. 581.
United States v. Berdan Fire Arms Company, 156 U. S., 552.
United States v. Harvey Steel Co., 196 U. S., 310.
United States v. Palmer, 128 U. S., 262.

Assignment of Errors.

Appellant hereby assigns as error, committed by the Court of Claims:

(1) That the demurrer to the amended petition was not overruled.

(2) That the amended petition was dismissed.

ARGUMENT.

There has been much controversy in the Court of Claims and in this court in recent years over postal questions; but the parcel post pay, in the aspects here presented, is a new subject to the courts.

It is convenient to state summarily the matters on which this court *has* ruled.

(1) The cases of the *Northern Pacific* and three other railroads decided January 12, 1920, 251 U. S. 326, in the matter of the mail divisor. Here four of the eight justices say the seven-days divisor was prescribed by the law, while four (including two who dissent flatly) say it was not; while two justices say that by performing services after the Postmaster General had promulgated the new divisor the carriers accepted that as the rule of their compensation, and six justices seem to take the view that the carriers did *not* bind themselves to that rule. Thus the result of that hard fought controversy is that six justices concurred in refusing to overturn the decision of the Court of Claims, but that there was no majority expression on any of the capital questions involved.

Mr. Justice Pitney, when saying in that case for himself and one other member of the court, that "the claimants in fact [1907] accepted the Postmaster General's offers as contained in the readjustment notices by proceeding to perform the prescribed services in accordance therewith," obviously was not thinking of any parcel-post mat-

ter. The Postmaster General's orders did not relate to any such thing as that, and no such thing was included in the "prescribed service," for the parcel post did not exist until one-year-and-a-half to three-years-and-a-half after the contract services of the claimants in those cases commenced.

Even in relation to the mails as they existed before January 1, 1913, the decisions of this court make it clear enough that the Government could not force any arbitrary requirement on a carrier nor acquit itself by paying a non-compensatory rate for the service. (See opinion of Justices Pitney and McKenna, *supra*, p. 342.)

(2) *Delaware, Lackwanna & Western Railroad Co. v. United States, 249 U. S., 385.* This decides no more than that carriage of the mails is matter of contract and that the claimant company was not shown to have had a contract for an invariable term, so as to forbid the immediate application of the five per cent reduction, in the pay for mail transportation, provided by the act of March 2, 1907.

(3) *Atchison, Topeka & Santa Fe Co. v. United States, 225 U. S., 640.* The effect of this is that the Postmaster General had discretion to prescribe the car space to be furnished for "working" the mails *en route* and that the railroad company was bound to abide the orders made by him in that regard if it continued to perform the service, though under protest. The sole subject of the suit was the furnishing and operating of a railway postoffice; it had no relation to transportation of mails of any kind.

There has been before this court, viz., in *United States v. Atchison, Topeka & Santa Fe Railway Co.*, 249 U. S., 451, appealed from the Court of Claims, the question of the parcel-post allowances to be made by the Postmaster General to railroad companies under the phrase in the act

of March 3, 1913, "not exceeding five per cent." The appellant contended that by the practice of the department in applying like phrases in acts of 1873, 1876, 1878 and 1917, and especially in the conditions of the act of 1913, the full five per cent was payable in all cases; but this court decided differently. That suit did not attack the five per cent rate of increase as non-compensatory.

In *New York, New Haven & Hartford Railroad Co. v. United States*, 251 U. S., 123, also appealed from the Court of Claims, it was decided that the obligation of the railroad company under section 4002 of the Revised Statutes to carry the mails for the prices (salaries) established at the outset was not affected by any increase, small or great, during the contract term in the matter to be carried, and that the company was concluded by its acceptance of the mails upon that understanding of the contract. No issue was made there on the parcel-post matter put on the railroad company midway of its contract—no attempt to show (1) that this new matter was generically different from the antecedent mails or (2) that it was not in the minds of the parties when they contracted.

So, in the instant case this court is to decide for the first time (1) whether the Government lawfully could have the parcel-post matter transported for the six months January-June, 1913, free of charge, or, in other words, at the entire expense of the railroad companies, and (2) whether for the remaining one, two or three years of their contracts the Government was bound to pay the railroad companies increases at rates which would truly compensate them, or, at the least, the full five per cent and one per cent and one-and-one-half per cent authorized by Congress?

Doubtless it will be admitted that these questions turn upon the provisions of the contracts signed by appellant in 1910 and 1911.

The undertaking, signed by appellant, printed upon the Postoffice Department's Distance Circulars, was in the following language (Rec., p. 2):

> "The company named below agrees to accept and perform mail service upon the conditions prescribed by law and the regulations of the department applicable to railroad mail service."

The regulations provided for abolition of the mail route and cancellation of the contract, or curtailment of the route with proportionate deduction of compensation, by the Postmaster General at his discretion. There was nothing in the regulations authorizing any Government officer to add to or subtract from the subject matter of the contract, viz., the mails as defined by the act of March 3, 1879. Obviously that was not a subject for "regulations."

There is not a shadow of a reason for saying that appellant had contracted at any time, or in any way, to transport, with the mails, those great loads of farm products, merchandise, etc., of which the parcel-post matter was composed, weighing anything, at different stages, up to eleven, twenty or fifty pounds and any package measuring near to six feet in length. It never agreed to transport anything, outside of first, second and third class mails, but packages of dry merchandise or other matters weighing four pounds or less—fourth-class mails, in other words.

Full Compensation Due for the Service of January-June, 1913.

It is charged in the petition (Record, p. 8) that the least rates of pay which would have compensated appellant for carrying the packages of eleven pounds weight or less

were 15 per cent of the amounts due and paid during those six months with respect to the ordinary mails; wherefore the *ad damnum* is put at that figure. Of course if this be not the right measure of the recovery, appellant, on proof, would be entitled to a judgment for the value of the services performed, counted by the proper measure.

While it may be difficult, it cannot be assumed to be impossible, to establish by proofs what rates would have compensated appellant for the parcel-post service. If this proves to be impossible, then the principle of extra work will apply. On that principle, if something, outside the bounds of appellant's contracts, was added to its burdens and the cost and value of the added service were not shown by any proofs, those would be assumed to be the same as attached to the ordinary burdens, viz.: the old, contract mails, *provided* only the new service was not less expensive to appellant than was the old service in proportion to quantities. Appellant in the petition has not undertaken to say precisely what the relation, in expense, was between the parcel post and the old service; but it has alleged that the former was more "not less" costly than the latter. No more than this would seem to be necessary. In this state of fact the rates per pound which claimant was receiving on December 31, 1912, for the mail service as it then stood were applicable to the tonnage added by the parcel post; and then, with respect to this first six-months service, appellant should have judgment for the amount stated in sub-paragraph 1 of paragraph XIV of the amended petition, viz: $7,547.16 (Record, p. 8).

There has been no occasion for this court, nor apparently for any other, to decide what the words "mail service," in the quadrennial contracts of the railroad companies, mean. This is not surprising because the act of

1879 had made it all but impossible that any rational person could doubt whether an article was within the list of any of the four classes of mail established. The most arbitrary officer who ever served in the Postoffice Department could hardly have thought of demanding that a railroad company carry in its mail car, as mails, a machine weighing more than four pounds, or a shot-gun or a basket of fruit or vegetables. Nor had Congress given rise to any controversies or discussions regarding the composition of the several classes of mails. Changes had been made in the law with respect to rates per pound, the estimating of the average weights for contracting purposes, etc., but all those assumed that the mails would still contain those things which were named in the act of 1879, with some amendments thereto, and none other. The quadrennial contracts, while reserving to the Postmaster General a somewhat broad field of discretion, contained no saving in the matter of the composition of the mails; and the Postoffice Department and Congress alike recognized that a change in that regard would not be lawful unless authorized expressly by Congress. Whether an actual increase by Congress would be lawful depended, with respect to contracts already in force, on the compensating of the contractor for any additional burdens put on him—for the taking of his property, in other words. The change actually was made in such a way as to impose a heavy burden on all of the railroad companies, with no compensation whatever for a period of six months and *pro tanto* to confiscate their property for additional periods of from one to three years by paying less than the cost of the new service.

A number of screen-wagon contractors' cases, decided by this court or the Court of Claims, are closely akin in principles to the instant case. One of the most note-

worthy of these is the Utah Stage Company's case, heard, and with the same result, in both courts; 39 Ct. Cls. 420; 199 U. S., 414. This court in its opinion said:

"There must be some limit to the service which can be required without additional compensation, under the authority vested in the Postmaster General by the contract, to call for new or additional service of the same character. Otherwise it is within the power of the Government to ruin a contractor by new and wholly unanticipated demands, which caution and prudence, however great, could not have foreseen. If this were a contract between individuals a claim of the right to require this vast amount of additional work—evidently not within the contemplation of the parties—without additional compensation, would hardly be seriously entertained. The same principles of right and justice which prevail between individuals should control in the construction and carrying out of contracts between the Government and individuals."

Chief Justice Nott, delivering the opinion of the Court of Claims in that case, said:

"In previous cases relating to these mail-messenger contracts the court has always been guided by a general principle. The contract has been considered, like all contracts, as having a definite subject-matter, known to both parties, concerning which they were contracting, but subject to two future unknown fluctuations, in the volume of the business and the amount of the service to be rendered. * * * Accordingly, it has also been held that the Department might multiply the number of branch postoffices and stations, but could not bring into the contract a new subject-matter and compel the contractor to render without compensation a service which he had not contracted to perform.

Thus, where the contractor had agreed to carry the mails from the general postoffice in New York to the railroads in Jersey City, the court held that he could not be

required to carry them to the Jersey City postoffice; and where he had agreed to carry them between the general postoffice and the branch postoffices and stations in the city, that he could not be required to carry them to numerous newly devised substations of a different character scattered about the city in apothecaries and cigar shops. In a word, the subject-matter of the contract was held to be the administrative system of the postal service in the city as it existed when the contract was made, with such additions or abbreviations as might be expressly set forth in the contract.

In the present case the bricks and mortar of the changed administrative system are the same—there are the same postoffice stations and railroads and steamboats—but out of identical materials an entirely new edifice has been built. In the details there has been no change, but in the aggregate of changes there has been an entire reconstruction of the system; and the new subject of contract brought thereby into the field of operation is far greater than in any case that has heretofore been brought before the court. The court is therefore of the opinion that for this service so rendered the claimant is entitled to recover what the service was reasonably worth. To hold otherwise would be to hold that this carefully prepared contract, with the elaborate specifications thereto annexed, might be reduced to three lines: The undersigned, in consideration of $————, covenants and agrees that during the next four years he will do whatever the Post Office Department bids him."

The Utah Stage Company had contracted to perform "without additional compensation, any and all new or additional service that may be ordered from July 1, 1893, or at any time thereafter during the contract term, whether between postoffices and railroad stations, between postoffices and steamboat landings, between postoffices and mail stations or between the several railroad stations, steamboat landings and mail stations now established or

that may hereafter be established, whether caused by the establishment of new or by change of site of existing postoffices, railroad stations, steamboat landings or mail stations within said cities or caused by the alteration of the routes made necessary by any other reason." During the contract term a new postoffice, not contemplated by the parties to this contract, had been built, uptown; and the decision of the courts was that the contract did not include the "vast amount of additional work" required in serving that office.

There was a sort of plausibility in the contention of Government counsel that the haul of mail to and from the new postoffice in New York was not generically different from the haul of the mails, containing precisely the same kinds of articles, to and from the old postoffice, down town. It would be utterly unreasonable to say that there is no generic difference between the mails of 1912 and the postal freight matter of later years.

In *Wolverton's case*, 34 Ct. Cls., 247, it was held that service of a postoffice "sub-station," a new institution since the claimant's contract was signed, was an essentially different thing from a "branch postoffice"or "mail station" named in the contract, and therefore, that the contractor was entitled to compensation for the former *quantum meruit*.

In *Weigel's case*, more recent, 47 Ct. Cls., 528, the contract was for mail messenger service by wagon in Chicago for a part of the mails only. Some of the mails had been carried by the street railroad companies or by letter carriers. During the term of Weigel's contract the Department dispensed with these latter services, and put the mails on Weigel's wagons. The court applied the principle declared in the Utah Stage Company's case and gave Weigel a judgment for this added service.

Other cases cited (p. 10, *sup.*) some relating to mail service but others relating to concerns and contracts of private individuals, illustrate how deeply courts will search to learn what was in the minds of contracting parties and how unsparingly they will discard words in those contracts which mean something else.

Freund v. United States, decided in this court on November 13, 1922, arose out of a contract for assembling the mails of the St. Louis postoffice. The service on which the bid was made was to be performed by seven circuits, each beginning and ending at a new postoffice; more or less mails being picked up throughout each circuit. The service which the contractors were actually compelled to perform—the new postoffice not being ready at the time expected—was made up of one-way trips to and from the postoffice, the wagons, in the main, coming away from the postoffice empty. A paragraph, added to the provisions of the advertisement, contained the following:

"It is hereby stipulated and agreed by said contractors and their sureties that the Postmaster General may change the schedule, vary, increase or decrease the trips on this route, or extend the trips to any new location of the postoffices, railroad stations, steamboat landings, mail stations, or points of exchange, with cable or electric cars named in the schedule for service for said route, in said advertisement, establish service to and from like offices, stations, landings, or points not named therein, and vary, increase, or decrease the trips thereto, and discontinue service between any of the postoffices, railroad stations, steamboat landings, mail stations, or points of exchange with electric or cable cars, or between any of them: Provided, That for any increase or decrease in the service authorized by the Second Assistant Postmaster General,

the pay of the contractor shall be increased or decreased, as the case may be, at the rate per mile of travel agreed to be paid for service under this contract, as shown by the annual rate of compensation and the annual miles of travel, based on the frequency and distances shown in the schedule of service for said route in said advertisement."

The decision of the Court of Claims was for the Government, and that was reversed by this court. The Chief Justice wrote the opinion of this court and said:

"There are two limitations in this very broad provision which deserve notice. One is that the offices, stations, landings and points, not named in the schedule, to and from which the Postmaster General was permitted to establish service, were to be like those named in the schedule, and the other is that the substituted service was to be such that the method of fixing pay in the original contract could be applied to it. Now it is clear to us that the substituted route did not establish a route to like stations and points. The findings give the two schedules and we reproduce them in the margin. An examination shows that the one was a light service of circuits from the postoffice and back again to take up collections from letter carriers. The other was the heavy work of transporting all the arriving and departing mail of the city from the railway stations to the old postoffice and back again. On the one, the contractors received pay for every mile traveled. On the other, the pay was made dependent on the carriage of mail and no empty trips of going or returning were included in the mileage paid for although the schedule made many of them necessary. It is impossible, therefore, save by forcing, to adapt the rate per mile of one route to the other. What has been said shows how different was the equipment needed, how variant the tonnage carried, what disparity between the hours of readiness required, and the differing methods of calculating compensation. This substituted route was undoubtedly necessary in the transportation of mails in the

city of St. Louis, but it was for a different purpose from that of the original route. The Department merely took advantage of general words in the appellants' contract to meet an emergency presented by the delay in finishing the new postoffice and the refusal of another contractor to continue this indispensable service beyond his term, to thrust this entirely new task upon the appellants here."

Additional Compensation Due After June 30, 1913, to Prevent Confiscation.

What has been said above regarding the interpretation of the present appellant's contract and the limits on the power of Congress, with special pertinence to the entirely uncompensated service prior to July 1, 1913, applies as well to service commencing on that date and running on some routes one year and on some routes two years therefrom, viz., to the end of the quadrennial contract periods; but there is a difference of detail.

In relation to the original parcel-post matter limited to eleven pounds, Congress in the Postal Appropriation Act of June 30, 1914 (37 Stat., Ch. 143, p. 791, Rec., p. 9), authorized the Postmaster General after June 30, 1913, to pay "not exceeding" 5 per cent for such increase of the gross weight of the mails as he should attribute to the parcel-post. By an order effective August 15, the Postmaster General raised this limit to twenty pounds, and again, by an order effective January 1, 1914, he made the limit fifty pounds. In the Postal Appropriation Act approved July 20, 1916 (39 Stat., Ch. 261, p. 412, Rec., p. 10), Congress authorized like increases of compensation, viz., of a maximum of one-half of one per cent in the first case, and a maximum of one per cent in the other case. To some of appellant's routes the Postmaster General allowed no increases whatever. To others, as against the 5 per cent authorized, he allowed increases ranging from

1.6 per cent to 4 per cent and as against the latter maxima authorized, yielding $14,824.14, there was allowed $552.51. The petition charges that when exacting the onerous services involved at the almost insignificant compensation allowed the Government confiscated appellant's property. Of course in this matter, as well as that of the initial six-months service, appellant's rights rest upon the Fifth Amendment to the Constitution.

The petition charges that the increases of compensation allowed to appellant were "far less than was necessary to compensate" it for the service described. At that stage, viz., the testing of the petition by demurrer, it was not important what proof might thereafter be made to support this allegation and whether the court might be convinced by the same. The court knew that it was not inherently impossible to make good such an allegation; that this thing has been done again and again, and in more complicated cases than this.

Vandalia Railroad Co. v. Schnull, 255 U. S. 113 (122).
Northern Pacific Ry. Co. v. North Dakota, 236 U. S. 585.
Norfolk & Western Ry. Co. v. West Virginia, 236 U. S. 605.
Lincoln Gas Co. v. Lincoln, 250 U. S. 257.
Detroit & Mackinac Ry. Co. v. Fletcher Paper Co., 248 U. S. 30.
Schneider Granite Co. v. Gast Realty Co., 235 U. S. 288.

At the Court of Claims there are no strict rules governing any part of the pleadings (*Clark v. United States*, 95 U. S. 539; *Heirs of Samuel Garland v. Choctaw Nation*, 256 U. S. 439; *Seaboard Air Line Ry's. case*, 53 Ct. Cls. 107). Obviously then it is true as to that court

(whatever different rules may apply by code in other jurisdictions), that a demurrer to a petition must be overruled if a valid cause of action is pleaded, whether the measure of damages be correctly or incorrectly stated.

With regard to the periods when appellant received some small compensation for the parcel-post service, the proof, conceivably, might fail on the question of confiscation and appellant could recover nothing. For the initial six months service, when no compensation was paid, appellant should recover on the basis of *quantum meruit* even though it should not make good its allegation that the 15 per cent pleaded was necessary to prevent confiscation.

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